IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

SATURDAY, THE 1ST DECEMBER 2007 / 10TH AGRAHAYANA 1929

CRL.A.No. 2331 of 2007()

M.C.NO.2/2007 IN S.C.NO.819 OF 2005 ADDL.SESSIONS JUDGE, FAST TRACK COURT-II ALAPPUZHA

APPELLANT: CR.PETITIONERS

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1. MURALI, S/O.NARAYANAN, COLONEY NO.42, THOTTAPALLY MURI, PURAKKAD VILLAGE.

2. ANIL KUMAR, S/O.BHASKARAN, PARAPPEL VEEDU, THOTTAPALLY MURI, PURAKKAD VILLAGE.

BY ADV. SRI.M.R.SUDHEENDRAN

RESPONDENTS: COMPLAINANT

STATE OF KERALA REPRESENTED BY THE EXCISE INSPECTOR OF ALAPPUZA RANGE THROUGH PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI.C.M.NAZAR

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 01/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

V. RAMKUMAR, J.

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Crl. Appeal No. 2331 of 2007

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Dated: 01-12-2007

ORDER

Appellants were the sureties of the accused in Sessions Case No. 819 of 2005 on the file of the Addl. Sessions Judge, Fast Track court-II, Alappuzha, which is an abkari offence. The bond amount of Rs. 25,000/-. Consequent on the non-appearance of the accused, the Sessions court initiated proceedings against the appellants under Sec. 446 Cr.P.C. To the show cause notice issued to them in Form No. 47 of Schedule II Cr.P.C. they had expressed their inability to produce the accused who had gone abroad and is still abroad. Thereupon the court below imposed a sum of Rs. 20,000/- as penalty from out of the bond amount of Rs. 25,000/- . The balance amount of Rs. 5,000/- was remitted. It is the said order which is assailed in this Appeal.

2. Even though the contention of the appellants that since the accused had gone abroad, they are unable to produce him is not legally valid so as to constitute a justifiable explanation to the show cause notice, in as much as the Apex Court has considered the same as a mitigating in the decision reported in **Mohammed Kunju & Anr. v. State of**

Karnataka - 1999 (4) Crimes 320 if the sureties had not actively or passively assisted the accused to go abroad, I am inclined to extend the said benefit to the appellants as well. Accordingly, the penalty payable by each of the appellants is reduced to Rs. 10,000/- (Rupees ten thousand only). In case, the appellants fail to deposit the penalty amount within one month from today they shall be proceeded against in accordance with law.

V. RAMKUMAR,
(JUDGE)

ani.